

UNITED STATES SMALL BUSINESS ADMINISTRATION

Hearing – Philadelphia, PA

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PROCEEDINGS

[START TAPE 1 SIDE A]

[Welcoming Remarks and Introductions]

CHAD FORSEE [phonetic]: Good morning. My name is Chad Forsee, and I am the government relations director for the Pennsylvania Landscape and Nursery Association, or PLNA. PLNA represents predominately family-owned small businesses in Pennsylvania's \$3.1 billion landscape nursery and retail garden center industry known as the "green industry."

The green industry employs over 100,000 Pennsylvanians. It's Pennsylvania's largest cash crop and is the fastest growing segment of agriculture in Pennsylvania. PLNA members contact me regularly with concerns relating to the regulation of their businesses by federal agencies. Chief among their concerns is the difficult issue of immigration. Guest workers who temporarily enter the United States under the H2a or H2b visa programs represent a vital component of the green industry's work force. In fact, PLNA members have consistently listed labor as their number one concern in industry surveys over the past several years. The H2a and H2b visa programs provide our businesses with employees who are willing and able to perform tasks most American workers will not do. Our members appreciate and rely upon these programs, yet they have found that attempting to hire guest workers can be a virtual nightmare involving several federal agencies, mountains of paperwork, thousands of dollars, conflicting and overlapping deadlines, and a decision making process that is inconsistent at best and arbitrary at its worst.

For instance, a landscape contractor recently ran into trouble when his guest worker, at home in Mexico during the off-season, applied for an H2b visa extension. The case worker at the American Consulate harshly questioned him, stating that he was suspicious that the guest worker wanted to "stay longer in the U.S. than the visa allowed." Though the guest worker had never violated the visa provisions and, in fact, had returned to Mexico twice after two consecutive summer seasons, his application was arbitrarily and unfairly denied by the case worker.

Thanks to the efforts of industry professionals, such as Michael Glaw [phonetic] of International Personnel Resources, who is with us today, our members can find help in navigating the stormy seas of guest worker process. But it shouldn't be this hard to hire guest workers. Streamlining the bureaucratic and regulatory process is in the best interests of the economy, national security, and small business. The green industry is growing in leaps and bounds and stands on the edge of unprecedented economic achievement in Pennsylvania, but without

access to sufficient labor our small businesses will cease to grow and their very survival will be threatened.

A second problem exists within the guest worker system. Once the employer has finally hired his or her guest workers, regulatory actions stemming from program oversight begin to take their toll. This has been witnessed time and again with the H2a program. One example is with respect to the U.S. Department of Labor. DOL personnel must inspect the housing provided by employers for H2a workers and must certify that standards of cleanliness and tidiness are being met. We have no problem with this requirement; however, inflexibility and a letter of the law approach can lead to onerous enforcement actions.

For instance, many guest workers from Mexico prefer to not use screens when windows are open. Employers have been cited when screens have been found removed from windows, even though it is the preference of the worker. Employers have also been cited when dirty dishes have been left stacked in a kitchen sink, even though the guest workers were returning soon to wash them. Such nitpicking and cultural insensitivity has caused many H2a program users undo harm. To prevent such actions in the future, an atmosphere of compliance assistance should be cultivated, and especially one where common sense and understanding take their proper place in the enforcement process.

The second most important federal issue that I encounter within the industry is the enforcement of actions of the U.S. Department of Labor's Occupational, Safety, and Health Administration, OSHA. I have encountered OSHA actions deemed onerous by members, including a situation where a member was cited because a safety warning sign was not posted within the maximum distance from a landscape contracting site. In this case the business owner was over the line by only one foot; however, he stated that he could not post the sign closer due to a large trench between the site and the maximum distance line. Reality and regulation can sometimes conflict, and when they do so flexibility can be shown. In this situation it would have saved a great deal of time and money for the business owner.

I must thank OSHA, however, for attempting to improve its relationship with the landscape contracting segment of the green industry. Our members were recently alerted via a mailing from OSHA's Philadelphia office that pre-inspection visits would take place in the coming months. The purpose of the pre-inspection visit is to help business owners prepare for potential future inspections by better understanding OSHA regulations. Such an approach does much to foster an atmosphere of compliance assistance and is more effective than the gotcha method witnessed within the regulatory world.

Thank you for the opportunity to share these concerns with you today. I believe that with better relationships between the green

industry and your agencies, we can together help businesses to grow and keep Pennsylvania and the U.S. competitive and strong. Thank you.

PETER SORUM [phonetic]: Thank you. I would hope that you would share with your membership the fact that our office exists, and when you have a case like the one foot and the penalty for that, that they would file a comment with us and we can take it to my friend Thomas and he can see what he can do about alleviating that penalty. I mean, that is what we do is case by case, but if you would share that with your membership. I appreciate your comments today and I would hope that if you filled out a comment form we'll take it as general matter to labor as well, even though they've heard it.

MR. FORSEE: Okay.

MR. SORUM: Thank you very much.

MR. FORSEE: I'll be happy to share information about the SBA with my membership, and I appreciate you holding this hearing today.

MR. SORUM: Thank you.

MR. FORSEE: Thank you.

MR. SORUM: Michael, since you've had an introduction already.

MICHAEL GLAW: I'm going to burden you guys with some paper.

MR. SORUM: You've never had that opportunity before, I'm sure.

MICHAEL GLAW: Good morning Ms. Watkins, Mr. Tolin [phonetic], Mr. Sorum, representatives of the Department of Labor and other government agencies, congressional representatives, and other distinguished guests. Thank you for the invitation to appear before you today.

By way of introduction, International Personnel Resources has served the landscaping, golf, and construction industries utilizing the H2b visa program since 2002 when we worked with 23 companies bringing 126 laborers; and the second year we grew to serve 68 clients providing 675 employees; and in 2005, 97 employers and their 1300 H2b seasonal workers. In addition, 90 IPR clients in 2005 were denied participation in the H2b program as a result of the total number of 66,000 authorized H2b visas being reached just three months into the fiscal year, on January 3, 2005. IPR is poised to serve approximately 200 greater Philadelphia-area employers for the 2006 season, with 2,000 H2b beneficiaries. Currently, due to a two-year regulatory release signed into law in April 2005, total available H2b visas for the

2006 season are estimated to reach 120,000. Additional regulatory changes to the H2b program have been proposed by the Department of Homeland Security and the Department of Labor in attachments that I've attached to my presentation today, as well as comments in rebuttal to these proposed changes by the Council of H2b Employers and our attorney, Ron Klasko [phonetic].

Employers in the landscaping industry suffer enormous challenges to maintain their seasonal employees. One landscaping industry sector employer, golf courses, estimates that turnover amongst seasonal groundskeepers exceeds 300 percent in a given year. After the winter layoff golf courses are successful at recruiting less than 10 percent of their previous year's seasonal employees back to the work in the spring. Clearly, U.S. laborers do not want these seasonal positions.

By contrast, in 2004, of the 675 employees IPR placed at 68 employers, 97 percent completed the season with their sponsoring employer. Of those 675 H2b employees, 94 percent returned to their same employer for the 2005 season. The shift from 300 percent turnover in season to 97 percent retention and from 10 percent season-to-season retention to 94 percent is staggering. The savings in recruitment and retraining costs, lost productivity, and quality are enormous.

Conservative estimates put the number of undocumented laborers in the United States today at 12 million, of which the vast majority is thought to be from Mexico. Yet, the H2b program stipulates that no individual with a previous illegal stay in the United States is eligible to apply for an H2b visa. America must encourage the undocumented here in the United States to step forward. I've spoken to thousands of these individuals over the last four years. The more the U.S. secures its borders, the less likely the undocumented are to return home. They perceive themselves as stuck here over the winter months, most without work, desiring nothing more than the opportunity to go home to visit their families and return when work starts in the spring. Relaxing the provision regarding previous undocumented stays for participation in the H2b program will result in tens of thousands coming forward in the greater Philadelphia region alone. These individuals would gladly go home, secure passports, go through rigorous criminal background checks while applying for visas at their embassies and return to work, now out of the shadows, assisting U.S. seasonal businesses to fulfill jobs no longer seen as advantageous by U.S. laborers.

Secondly, for the 2005 season, almost 50 percent of the companies that IPR represented in their H2b applications did not participate in the program due to the cap of 66,000 visas being met in January. It is borderline unethical for me to encourage companies to utilize the H2b program without assurances of visa availability. The H2b program works very effectively for the small few for whom it

benefits both in terms of employers and foreign nationals.

In summary, the United States must address the status of the 12 million undocumented workers already in our borders by relaxing the participation prohibition of these individuals in the H2b program and other work visa programs. Finally, the United States cannot satisfy millions of seasonal jobs with an estimated 120,000 H2b visas.

Once again, thank you for the opportunity to appear before you today and for consideration of these regulatory changes.

MR. SORUM: Thank you very much. Appreciate you taking the time; we'll see what we can do. And I see that you already gave Thomas a copy of your documents, so that's a good thing.

THOMAS HICKS: A question, since you've mentioned my name, I just want to clarify and make sure that everyone understands that I took a crash course in this H2 visa program yesterday. There's a two-step process. Go to the Department of Labor and get your certification and then next go to the CIS to get the visa. The cap is placed on the visas by CIS. So, even if the Department of Labor was to certify every employer's request for a certification, there's a cap still placed on it by CIS. So, I just wanted to make sure...

MR. SORUM: Do you have any comment on that?

MR. GLAW: In fact, the 90 employers that were denied by CIS were approved by DOL.

MR. HICKS: Right. Okay; I just wanted –

MR. GLAW: The DOL –

MR. HICKS: -- the DOL didn't—

MR. GLAW: Absolutely, the Department of Labor – well, actually, you know, if I'm being asked my comment about the Department of Labor's activity in this, each state Department of Labor proceeds at a level or rate of speed that was either detrimental or opportunistic to those employers. So, for example, the Philadelphia office, which was extremely rapid in processing Department of Labor applications to gain authorization to proceed to immigration, all of our employers in the Philadelphia region were approved; whereas, in Maryland, no one was. Only one employer out of 40 in Delaware was. Why is that? They were all filed the same day. The question is what happened in the Department of Labor? Why were these things sat on? No one seems to give a clear answer to that. But, in fact, eventually all of the Department of Labor certifications were approved, it just happened after the cap was met and therefore made them irrelevant.

MR. SORUM: Well, you've filed a comment, an official comment form with us, haven't you?

MR. GLAW: Yes, I did.

MR. SORUM: Okay.

MR. GLAW: Well, I did the thing with the e-mail.

MR. SORUM: Right.

MR. GLAW: We'll address that.

MR. SORUM: No, that's fine, because I had a sense when I read the initial that it was a CIS problem not a DOL problem, and we've got to go there to address it. And, we will.

MR. GLAW: Thank you.

MR. SORUM: Jerry, you ready?

JERRY SPEER [phonetic]: I'd like to take a moment and thank the members of the National Ombudsman's Office for hosting this hearing. This issue is a little complex to detail in five minutes, so I will try to explain a brief background in history and allow my colleagues from the medical products industry to tackle the regulatory, health, and economic impact of this enforcement action.

My name is Jerry Speer, and I am the president of Speer Products, Incorporated. I have been involved in the procurement of raw materials from USDA inspected establishments for over 25 years. These materials are used in regulatory-approved pharmaceuticals and medical products; also, many other products in various stages of clinical trials. Collection of such materials is performed by trained Speer Products personnel conforming to strict regulatory approved and audited standard operating procedures without deviation. It is required by regulatory bodies for the sourcing of such raw materials at a minimum to originate from animals slaughtered under USDA federal inspection that have been deemed healthy and fit for human consumption. This must be verified by the competent authority. FSIS personnel are at these facilities performing this inspection.

Speer Products trained personnel provides a list of the inspected and passed animals utilized for the collection of such materials to the process and facility manager for review and signature. The list is then presented to the USDA veterinarian inspector for verification signature. The signed verification assures that the carcasses listed have been stamped past and were deemed fit for human consumption. Verification is insured by matching the listed animals with the daily routine condemned log. This task takes FSIS personnel approximately two minutes or less to complete. Speer Products has been receiving this verification of carcass inspection from FSIS for approximately 15 years in order to establish the complete quality management system required by regulatory and good manufacturing procedure requirements.

Some of these materials are extremely time and temperature sensitive and need to be order-processed within minutes of post-mortem inspection. Speer Products has always been compliant regarding FSIS

requirements with a history of conformance with all requests from FSIS regarding changes to verbiage format, etcetera.

On March 9th, FSIS Notice 17-05 titled “Certification of Inedible Animal Products” was distributed. I met with the FSIS circuit supervisor to clarify the language of this notice. I stated that Speer Products does not require certification of any products, only verification of carcass inspection which FSIS is already doing. The circuit supervisor was confident this would not apply to our situation, but to clarify we contacted FSIS tech services via conference call. Tech services advised the circuit supervisor that FSIS requirements are met by the application of the official mark of inspection stamp. No certificate is required, with the exception of 9-CFR-351, which is the certification of technical animal fats, and 9-CFR-355, products for dogs, cats, and other carnivore, for inspection certification. The circuit supervisor was advised to enforce Notice 17-05 and not to sign a verification of slaughter inspection.

Numerous contacts were then established with many USDA departments explaining the severity of this situation requiring assistance, meetings, and an extension to receive the verification of carcass inspection to ease the public health and economic impact of this ruling.

On April 11th, we received a letter from Mr. Durfler [phonetic], the FSIS assistant administrator of the office of policy in response to a letter sent March 21st and 31st to Dr. Barbara Masters, the FSIS acting administrator. The letter states that FSIS is correctly interpreting Notice 17-05 and refers our organization to contact ATHOS [phonetic], which we have already done numerous times and ATHOS refers us back to FSIS because they are at the facilities performing this inspection. Mr. Durfler also refers to a phone conversation we had on April 7th, where he quotes I mentioned we would need 30 days to implement changes to good management practices to allow us to provide materials. A 30-day exception to 1705 was granted to our establishment, which expired on March 11th without exception. However, the information Mr. Durfler quoted as our conversation on 4/7 is incorrect. I explained to him even if we had a fix for this situation today, it would take a minimum of 30 days to implement changes to hundreds of existing FDA approved submittals and SOPs and to have training complete before procurement of critical raw material resumes. I also requested, since there is no resolve as to date, that we receive an interim decision for FSIS to continue to supply us with the same verification we have been receiving for the past 15 years to ease the severity of the situation until a permanent solution can be implemented that will be acceptable for all organizations.

We had numerous contacts with our district congressman’s – Congressman Michael Fitzpatrick, who on our behalf petitioned USDA

personnel to grant us an extension until a permanent solution is reached. To expedite this procedure, he offered his services to host the meeting in Washington with all parties involved. To date, the congressman's office is not getting a cooperation and timely response from the USDA personnel involved. Congressman Fitzpatrick was appalled that we can receive this required verification for pet food, but now we cannot receive this for medical products that are used for heart and brain surgeries implanted directly into humans.

We received a response from FSIS tech center dated April 25th. This was the first recommendation of a possible fix for this problem. The recommendation would be to use the existing condemnation certificate, FSIS Form 6300-1. By providing this condemnation certificate from the day's slaughter, if none of our animals were listed, we could assume that the animals on our list passed inspection and were deemed fit for human consumption. I do not believe this application will be acceptable. Why would the FDA want, as part of required batch records, --

[END TAPE 1 SIDE A]

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JERRY SPEER: -- dated April 25th, this was the first recommendation for a possible fix for this problem. The recommendation would be to use the existing condemnation certificate, FSIS Form 6300-1. By providing this condemnation certificate from the day's slaughter, if none of our animals were listed, we could assume that the animals on our list passed inspection and were deemed fit for human consumption. I do not believe this application will be acceptable. Why would the FDA want, as part of required batch records for life-sustaining medical products, any listings or descriptions of sick or diseased animals in place of a proper health statement? The EMA [phonetic] and other world regulatory authorities dictate in plain language this will not meet requirements.

We continue to follow through on every recommendation from all USDA departments. On April 27th Speer Products submitted a formal petition for rule making requesting for FSIS to provide a provision providing a permanent fix for this action. There is no guarantee this will be granted, and we were told this could take up to one year for a final response.

On June 10th Speer Products requested the services of the Agricultural Marketing Service, forwarding a draft of our quality management system in order to qualify for this service.

On June 14th we were told our request was received and looks in order, but they needed to receive a request for these services from FSIS.

To this date we have not received the response. This process

could take several weeks to months to be implemented once the request from FSIS is established. The only alternatives to receive this required verification would be number one, to import some of these less time-sensitive materials from Australia or New Zealand. For every million dollars spend in the U.S. to produce these materials, it would cost approximately \$10 million to import. This would further offset our country's trade deficit, remove jobs from U.S. citizens, and remove revenue from the beef and pork industry in this country.

Number two would be to load some of these less time-sensitive materials on a temperature-controlled truck, export them to Canada, turn around at the border, and then bring them back into the U.S. It seems to me ironic that we can receive this required statement for products originating in this country and exported, products imported into this country, but now not for products that originate in this country and are further manufactured in this country.

This decision is not based on science, economic facts, and ethical values. In regards to FSIS Notice 17-05, which was the start of this compliance enforcement action, FSIS continues to supply this verification statement for products not specified in 9-CFR-351 and 355 to other U.S. business entities practically on a daily basis.

In conclusion, to assure that many life-sustaining products will be available for our U.S. military and citizens, a competent governmental authority must grant a decision for FSIS to provide the necessary requirement until a permanent solution is implemented. Thank you.

MR. SORUM: Thank you, Jerry. Here comes Judy.

JUDY O'GRADY: Good morning Mr. Sorum, Mr. Tolin, and Mrs. Watkins. I'm Judy O'Grady, the senior vice president of Integra Life Sciences Corporation. Integra Life Sciences and myself would appreciate the opportunity to address this regulatory fairness hearing for small businesses in support of Speer Products. Integra Life Sciences is a leader in the field of tissue engineering, providing life-saving medical devices and implants that improve the quality of life for patients. These products are all collagen-based derived from bovine tendon. The bovine tendon as a raw material must meet a rigid set of requirements and acceptance criteria. Integra manufactures products such as Integra Dermal Regeneration Template, which has been approved by FDA for the treatment of severe burns and reconstruction of scars. This product is the first and only FDA approved product with the claim of regeneration of dermal tissue. The product is used in thousands of patients all over the world. Most significantly, it's part of the FDA Emergency Preparedness Program. Other unique products, such as our Durogen [phonetic], Durogen Plus, Suturable Durogen, which are used as duro [phonetic] replacements, which are the covering of the brain; our Neurogin [phonetic] Nerve Guide, for repair of

peripheral nerves; our Neurowrap, for nerve injuries; our Heliostat, Collostat, Haemostatic agents, which are used to stop bleeding during surgery; and other critical products.

For over 20 years we obtained the bovine tendon raw materials for manufacture of our collagen products from the same meat packing slaughter house facility, Moyer Packing. We currently use Speer Products to obtain the tendon for these products. We have definitive criteria for this tendon regarding the age, the health status, and source of the animal. We are required to obtain a certification, signed by USDA, that the animals at Moyer Packing have received pre—and post—mortem inspection, are free of disease, and fit for human consumption. This certification is imperative and required documentation. With the current global issues regarding bovine spongiform encephalopathy, or BSE, and transmissible spongiform encephalopathy, TSE, there are now extensive regulatory requirements and documentation requirements from FDA and regulatory agencies in Europe, Canada, Australia, Japan, and other countries regarding the safety of this bovine tissue. Such regulations, such as the Commission Directive 2003-32-EC which has detailed specifications in regards to requirements laid down in the council directive with respect to medical devices manufactured utilizing tissues of animal origin and other regulations. We have become aware of a concerning change in procedures by USDA by issuance of FSIS Notice 17-05 Certification of Inedible Animal Products. We've been informed that USDA will no longer issue certification to Speer Products that the bovine animals from which these tendons are obtained received receive NTN [phonetic] post-mortem examinations, are free of disease, and fit for human consumption. This is, quite frankly, shocking. Without the certification we will not be in compliance with information and commitments we've made to FDA, European Union, and other countries. We will not be able to manufacture or market our products. We have been unable to obtain this bovine tendon with certification to manufacture our life-saving products for over four weeks. The bovine tendons are, in fact, edible, but are harvested for use in a medical device. We question how in light of the current issues regarding BSE and, in fact, a case of BSE being found in the United States, and another suspected case, that the USDA has decided to no longer provide this certification.

Integra's products are used in hundreds of thousands of patients per year in the United States and all over the world. This certification is part of a risk analysis and approval process that we have provided to every government, including the FDA. This affects our company for which these products are an integral part of our business. This also effects our commitment to the U.S. government as part of the Emergency Preparedness Program. We further question this decision in regards to the protection of public health. We respectfully request that

the certification program for these meat packing facilities, which also supply bovine tendon tissue for the medical and pharmaceutical industry, be reinstated. Thank you.

MR. SORUM: Thank you, Judy. Frankly, I know more about the issue now than I did before, and I appreciate you educating me because I've read Jerry's submissions but I didn't quite understand what he was trying to get to, other than critical and that it had to be done now. But, this is great testimony. It will really help. Thanks.

MS. O'GRADY: Thank you very much. If you have any other questions I am here.

MR. SORUM: Do you have a comment form filed with us?

MS. O'GRADY: No, I don't. So I will do that.

MR. SORUM: If you'll fill one out up front before you leave, I'd appreciate it.

MS. O'GRADY: I certainly will. Thanks.

MR. SORUM: Thank you. Do we have Andrea Nets [phonetic]? Oh, I'm sorry, are you Chris?

CHRIS WATT: Yes.

MR. SORUM: Somebody crossed you out on my list, so Chris, come forward please. I'm sorry.

CHRIS WATT: Thank you. That's all right. Hello, my name is Chris Watt. I'm the QA director at Kinsey-Nash [phonetic] Corporation. Kinsey-Nash Corporation is a medical device company known for providing innovative product development and advanced technology for a wide range of medical procedures. The company has expanded well beyond its beginnings in vascular puncture closure, and today provides an extensive range of biomaterials products into multiple medical markets, primarily cardiovascular, sports medicine, and spine. KNC is counted as one of the 400 companies in the Philadelphia area life science industry. 12 percent of the life science jobs in the region are at medical device companies, as stated in the Philadelphia Enquirer, June 21, 2005.

Biomaterials are substances that treat, augment, or replace tissues and organs or body functions. They are used regularly as components and elements in a wide variety of resorbable or permanent implants. Advances in materials technology and a better understanding of the biological processes involved in tissue formation and remodeling have led to introduction of resorbable biomaterials-based products to address long-standing deficiencies of traditional products and therapies. Kinsey-Nash Corporation's expertise in biomaterials provides multiple material platforms to address specific needs to our customers and partners in a wide variety of markets.

Collagen is a well-characterized and extensively used biomaterial for the manufacture of medical products. KNC has significant experience in processing collagen into diverse product formulations, including powders, gels, pastes, sponges, and structural matrices. We can combine collagen and other synthetic or naturally-occurring materials using our proprietary process to create new materials with unique characteristics and diverse product applications.

A significant number of therapeutically important medical devices currently on the market include components that are derived from various tissues of bovine origin, including tissue graphs, heart valves, and bone void fillers. Kinsey-Nash provides collagen components to numerous manufactures who then produce finished medical devices of therapeutic value to patients worldwide, such as surgical reinforcement patches, bone grafts substitutes, vascular graph coatings, vascular closures, biopsy markers, and wound dressings. These devices are used during surgical procedures providing quality medical products to doctors and enhancing the quality of patients' lives.

Kinsey-Nash Corporation was the inventor and developer of Angioseal [phonetic] Vascular Closure device. Kinsey-Nash pioneered the concept of arterial closure and was the first to place a resorbable biomaterial component into the human vascular system. Today the Angioseal device manufactured and sold by St. Jude Medical is the leader in arterial puncture closure devices in the world with over five million devices implanted in patients worldwide. If doctors do not have access to these puncture closer devices, they would have to use less desirable devices or revert to the old method of manual compression, which involved the patient lying on their back for over six hours with a sandbag applying pressure to the wound, whereas with the Angioseal device it takes 40 minutes before the patient can get up and walk around.

On June 21, 2005, Kinsey-Nash announced the execution of a new Angioseal Vascular Closer device and component supply contract with St. Jude Medical Incorporated. The contract, which is effective June 30, 2005 and will expire in December 2010, provides for Kinsey-Nash to exclusively supply a hundred percent of St. Jude's medical requirements for the collagen component of all current and future versions of the Angioseal. The Kinsey-Nash / Orthoveda [phonetic] collaboration, originally established in 2003, provides for the joint development and commercialization of new products based on Orthoveda's Vitas [phonetic] Scaffold technology, in combination with Kinsey-Nash's proprietary biomaterials products. Kinsey-Nash manufactures the products and Orthoveda markets and sells the products worldwide through a focused biomaterials distribution channel, with Kinsey-Nash receiving a royalty on the net sales. To sell and distribute our collagen in Europe, U.S., Canada, Japan, and

Australia requires the animal to be fit for human consumption and rely on certificates delivered in the context of the food and agricultural inspection program, EGUSDA EU veterinary inspection program. Authorities require registration or certification of medical devices incorporating materials of animal origin and reference the EN-1244-2 Series on animal tissues and their derivatives utilized in the manufacture of medical devices. The reason we are here today is to request the USDA signature on the certificates that deem a cow fit for human consumption.

EN-1244-2, the harmonize guidance that is recognized by European, Japanese, Australian, and Canadian authorities for devices derived from animal tissues defines a veterinarian as the official veterinarian designated by the relevant government authority in the country concerned or person suitably qualified for this responsibility that has been delegated by the relevant authority. In other words, the USDA inspectors fit this definition, having the authority of the U.S. government to determine if the animals are fit for human consumption. For the past 15 years and for as long as Kinsey-Nash has been manufacturing collagen, until March 17, 2005, Speer Products has been able to utilize the USDA inspector present at the time of the animal's slaughter as the official veterinarian to certify by signature the health of the animal during the collection of the bovine hides from which Kinsey-Nash collagen is manufactured. What we are asking for is nothing different or above and beyond what is currently being done by USDA inspectors at the time of animal slaughter. We are collecting hides, not the meat; and we are only requesting that the USDA inspector sign a certification the animals from which we obtain the hide for is fit for human consumption, per international regulations.

In conclusion, the inability to obtain animal hides which meet U.S. and international regulatory requirements would constitute a hardship for our business, and let us not forget the millions of patients worldwide that would ultimately be affected by not having access to the most innovative devices for their care. Is what the USDA did reasonable? We don't think so. We only ask them to certify what they were already doing. Thank you for listening to us today.

MR. SORUM: Are you a small business?

MR. WATT: Yes, we are.

MR. SORUM: Okay.

MR. WATT: We have approximately –

MR. SORUM: Do you have a copy of your testimony and your comment form?

MR. WATT: I don't, but I will get that to you.

MR. SORUM: Okay, great. Thank you. Okay, Andrea.

ANDREA WARFIELD: My name is Andrea Warfield, and I am the director of special projects for the American Association of Meat Processors. Our international association has more than 1700 members, and we represent the interests of businesses in the meat and poultry processing industry. Our members include meat and poultry processors, slaughterers, wholesalers, retailers, caterers, home food service companies, as well as suppliers and consultants to our industry. There are 33 state, regional, and provincial associations of meat processors that are also affiliated with AAMP. Most of our members are small and very small businesses; majority of them family owned. We are pleased to voice our concerns to the Small Business Administration about how unfair enforcement of government regulations is putting a hardship on small businesses.

In the past 10 years the number of state inspected plants has dropped from 3500 to 2500, and the number of federally inspected plants from 8500 to 7500. The meat industry is one of the most regulated industries in the United States, and it is for that reason that I am here to speak to you today.

Meat and poultry processors and slaughterers operate under a system of continuous government regulation and inspection. The issue that has continued to be a problem for small and very small processors is the issue of inspection over time. Plant operators are forced to pay inspectors overtime fees for their services beyond the normal working time, such as on weekends or holidays. When the hazard analysis and critical control points, or HACCP, inspection system began, top officials from USDA's Food, Safety, and Inspection Service, FSIS, promised plant operators that overtime fees would be eliminated and that plants could operate anytime of the day or night as long as there was one tour of inspection.

Many small plants operate under a patrol system, or tour of inspection, where an inspector is responsible for monitoring several plants in an area each day. Inspectors do not have to be present in the plant when processing operations are done during regular daytime hours. Some processing establishments have temperature monitoring and recording systems in place to ensure proper cooking and cooling occurs, and others manually take such temperatures and record them on HACCP forms. Independent of which recording method is used, the data could easily verify the procedures when the inspection personnel return the next day. Instead, plants have to pay inspectors \$50.04 an hour for overtime, possible two and three days a week, for a two hour minimum each time. That amounts to thousands of extra dollars a year that small businesses must pay for unnecessary overtime.

One of our members produces a bone-in ham which requires 12 hours of cooking time. His plant is subject to overtime inspection two out of every five times when those hams are produced. The amount of

overtime typically varies by individual inspectors as well as the district the inspector is in, making the charges unfairly distributed. One month overtime charges amounted to \$3,000.00. The impact of this amount of expense on small processors is severe, ultimately forcing some of them out of business.

Another member was charged overtime to move hams out of the oven and into the cooler on a Saturday morning. His plant typically cooks their hams overnight, so the process used was exactly that that was used or the same during the week. However, since an inspector does not need to be at the plant every day for that same verification, it seems unnecessary to be charged overtime. The additional costs for approximately 60 hams was 15 cents a pound; and for a very small plant, this is a significant loss of profit.

Our main point is that years ago USDA promised to do something about this problem and thus far has done nothing, despite being frequently reminded. Processors do not mind the patrol basis of inspection, but when it shows signs of becoming a plant-funded system, these small businesses have a problem with it. One of our members even had the same overtime regiment for over five years.

It is hard for small and very small meat and poultry businesses to stay in the meat industry because they can no longer afford to. The impact of losing small family-owned meat processing establishments affects small livestock producers and other agriculture-related business within local communities. One alternative for small meat and poultry businesses is to give up the inspection and operate under retail businesses. Many of them do not want to do this because they want to remain in the wholesale business, but if they do give up inspection and go retail, it means less inspection of meat and poultry products with more creation of meat and poultry products at the retail level outside of inspection, and in the end less food safety for the people of the United States.

Thank you for your time and attention to our concerns. We look forward to continuing our relationship with the Small Business Administration to protect our members in the future of the small and very small meat and poultry processors.

MR. SORUM: Thank you very much, Andrea.

MS. WARFIELD: Thank you.

MR. SORUM: Do we have a comment for from you?

MS. WARFIELD: No, but we'll be submitting one.

MR. SORUM: She's got it right there for you. Earl Keefer [phonetic]?

[Background noise]

EARL KEEFER: I do not have a comment form, but I will see that it is mailed to you.

MR. SORUM: Thank you very much. You can fill it out actually when – before you leave.

MR. KEEFER: Thank you Mr. Sorum and the audience here. My name is Earl Keefer; I represent the Independent Miners and Associates, which is a deep-mining anthracite coal community, predominately in Skocul [phonetic] in North Umberland counties in Pennsylvania. By the way, Pennsylvania is the only state that has anthracite coal that's mined in the continental United States.

When the MSHA [phonetic] 69 Act was passed we had 211 active deep mines. As I stand here today, we have 15 working deep mines. They're mom and pop operations, which are small three, four, five, six man operations. They're worked as a collective owner to the product that they produce. This is what they derive the income that they have. We have a problem with MSHA. We've had 17 different district managers in District 1, which encompasses all of the anthracite in Eastern Pennsylvania, since the 69 Act. We have a team of managers in District 1 that is positively unfamiliar with anthracite coal, unfamiliar with deep-mining practices, and we are not surviving. In the four years that this management team is here, we went from 33 active mines to 15 active mines. If this trend continues, there will be no deep-mining of anthracite coal in the very short term.

I'm going to leave a graph with MSHA's own numbers on the frequency of inspections in District 1. The problem that we have predominantly is unfamiliarity with deep mine and deep-mine practices, and the agency is staffed, to our estimation, unbelievably in excess. We have as many as 30 and 40 and more inspection man-days at a mine that has four people total in a calendar month. Sometimes we have three, four federal inspectors in one calendar day. When that occurs, almost all activity at that mine stops because you cannot let an inspector that's unfamiliar with the specialized working and conditions that they have in a mind unattended. So, the whole process stops and that day is wiped off the calendar and, in essence, thrown away.

We are not short in having violations written. Some of the statutes are in the code and are legitimate to be written, and then we have a management team in District 1 that writes regulations and cites conditions that are not in the law book. This is what we have a problem with. We will be very happy at Independent Miners and Associates, in their office in Tremont, Pennsylvania, to supply reams of information that we have notified Arlington with, our congress people with. It is an ongoing struggle. I have not brought instances, but from the top of my head I can relate 20 or 30 or 50 that are totally unjust, unfair, and are not covered in those aspects in the 73 Act.

MR. SORUM: What would be helpful is to have you fill out comments on the specific examples so we can have those dealt with –

MR. KEEFER: Could we supply your office with file copies of abuses, that we consider abuses?

MR. SORUM: Absolutely.

MR. KEEFER: We can supply you with a lot.

MR. SORUM: What we need is the citations –

MR. KEEFER: We can supply that.

MR. SORUM: --and the comment forms from the people who were cited.

MR. KEEFER: Okay.

MR. SORUM: So that we can take them to the Department of Labor, and Labor will respond.

MR. KEEFER: So you know that I and the industry is very, very serious, I want – not using a name, but I want to cite one instance of unfairness. All right?

MR. SORUM: Sure.

MR. KEEFER: I'll be very brief. An operator got a list of orders as the result of a technical support investigation to have four or five different items corrected, and it's a wooden structure which most of the facilities are, to have them corrected from four or five deficiencies. However, the deficiencies at this operation were included the statement that a structural engineer had to approve all of the repairs. Now, none of the repairs were life-threatening or of the main frame or structure. It was all auxiliary equipment in the plant. The operator wanted to know why a structural engineer's approval on customary routine repairs was necessary. The best information that we could gather was from the inspector and the conference officer in the department. The resident inspector, an engineer, said he questioned it at the home office and the home office said that requirement is in because that man talks to the reporters. We do talk to Associated Press reporters and local newspaper reporters when we think it's necessary. It seems as though that's retaliation. So the operator conferenced the call by telephone to the conference officer that's appointed by the district; again, wanted to know why must I have a structural engineer's approval. There's none available in this area. Why? Why is this a requirement when it is not a part of the regulation as published in the Act? The conference officer said, "I don't know, but I'll find out." So he evidently inquired by the second officer in command in District 1. That's in – we wanted to have that provision in the citation; it's going to stay in; we have the authority to request it; and the reason we want it in is because he talked to the congressmen. That's the only example I

want to give you, but we are ripe with a volume of those abuses.

MR. SORUM: Well, now that you know that you have this service to deal with these issues, I hope that you'll use us to act in your behalf.

MR. KEEFER: We'd be glad to. That shows, I'm sorry, the amount of citations issued on less mines; now we're at 15, it shows 22 as the number now; and this is MSHA's own numbers, it's not created by Independent Miners or any operator.

MR. SORUM: Thank you very much.

MR. KEEFER: I thank you very much.

MR. SORUM: I will say that, in MSHA's defense, we had a case with a miner in the state of Maine who had filed his reports and the reports, the regional office claim had not been received and they cited him, and upon referring it to Mr. Hicks' office, having it investigated, not only did they find out that the miner was right, but the assistant secretary at the time called the miner directly, the mine owner, and said, "We're sorry that we wasted your time and your money." So, they do try and get to the bottom of it. So, I need all the facts you can provide me on every one of these cases because they do look at it; they are serious; they want to make certain that safety is in place, however there is a no retaliation policy that the Department of Labor has and they're very, very serious about that, too. So, having said that, Waylon, why don't you –

WAYLON: I'm with Earl here. I'm just sitting here as moral support for issues with MSHA.

MR. SORUM: David Lucas, do you want to step forward? Thank you.

DAVID LUCAS: My name is David A. Lucas from Higgins ROD 1 [phonetic], Skullhaven [phonetic] – Skocul, I mean. I've been a coal miner for over 40-some odd years. I started as a bullegger [phonetic] at nine years old with my father and I have stuff wrote down here on a [indiscernible] a little bit.

The anthracite [indiscernible] mining is one hundred percent different between soft coal mining and the hard coal region. We're from the hard core region here. Every job that we want to do, we want to change anything under coal mining, we have to write a plan out. These plans can last from a month to six months to a year, and in my situation I was only working one [indiscernible] line, due to being flooded out due to heavy storms here last year; and I was shut down for how many months that I couldn't operate them mine at all, due to the fact that they wouldn't approve a plan. So, I put a seal in and the seal was – when we quit, was two-inch plank and a fire-proof smear on it, and I put it in and then two months later I went to take the seal out. I

had to write another plan out and I used the word “use common sense only” in the number one paragraph. In the number four paragraph, use common sense only. Take the seal out the opposite you installed – the way you put it in. Well, they got bully about that and they wouldn’t approve the plan, and they sent it back real quick like to me, and I had my brother take “some common sense” out, which in my job if we don’t use common sense you’re out of business, you’re a dead man. So, get along with that.

Another thing, too – January of 2004 to July of 2004 I had 58 federal mine inspectors at our mine. I had the state mine inspectors – I think it was 24 times, but really I called the state in at my request to give me my inspection. The federal come in, they shut me down; they come in, they take the order off; and a couple days, a week later, they come in and put the order back on again. And then – this is all through Jack Kuzar [phonetic] and Bill Zavari [phonetic], out of Lukesboro [phonetic] office, in the soft coal region. Then August 11th, all heck broke loose again. Then Les Coleman [phonetic] from the soft coal region, never seen the inside if an anthracite coal mine, and I had to be fortunate to have him come to our mine. When he come into our mine, before he went down inside the mine, he had 29 violations wrote up outside. I’m going to just give some examples: door knob turned the wrong way, didn’t have the sign of office where my books and everything’s at, just bull like that.

But, anyhow, before that I had 58 mines bigger than that mine before August, and he rode my slope buggy [phonetic] down. They had put a stop order on my slope buggy in June, they took it off then in June, they put it back on in July – the stop order, again my slope buggy, due to my safety cable being five-eighths in diameter and my hoist cable from the wench was only – was seven-eighths, it was a little bit bigger; I bought a bigger cable for better, probably safer, how do I say, for – I can’t even think of it now. Anyhow, for safer conditions, I’ll put it that way. So, August 11th, when it was time to go down inside the mine with Lester Coleman, he stood at our mine site after I took my men down inside, before I did my pre-shift inspection I took my two men down inside and I took old Roman Schwartz [phonetic], he was our regular mine inspector, and Les Coleman, he was the supervisor; he was a supervisor when I first met him. He didn’t want to get in the buggy, and finally I told him about getting in or either crawled on. So, anyhow, he got in the buggy, he rode down, we made inspection by gangway, which was into and through, at 94 feet. It was all brand new workings; I drove an escape lift through. We was in there, got an air reading. I brought them back out again. I called them. My 25 horsepower [indiscernible] drag pulling on the 480 wire, which is 480 volts going through for a 25 horsepower [indiscernible] drag. That was that day. We took them up to the overcast, where we go into a monkey [phonetic], where I intercept the old workers and I helped

Uncle Frank do his workings, and the air hole goes out 45 feet, [indiscernible] straight down, a 67 degree pitch. And he looked down and he said, "What the hell is this?" I said, "It's the air hole, Les. You were just in it." So that told me something about him. But, anyhow, now we're going to jump back to – ahead here quick, so September the 8th. The 8th Les Coleman appeared again at the mine and I walked into the gangway with Ron Bajorski [phonetic] and I had told the men, my worker men with me, Porters, they were in there and Les Coleman said he'd stay on the bottom.

So, in the mean [indiscernible] he was on the bottom out there, and here he did it again. I looked out, there's a word I shouldn't say, but I better not say it, I guess. I looked out and I said what the heck's he doing out there? So I had some other words for it; so I didn't say it – I won't tell you – so, I walked out and here he was, with both hands on my electrical wires again. And this time he broke the rope next to it after all. Now, he put myself, my two men in jeopardy that we could have had an electrocution there. But with our [indiscernible] set the way they are, it would have caked all. But what he did there, he violated our mine. What he did there, he sabotaged equipment just to keep my out of business, which I fixed the same day within hours, a couple of hours time.

And another thing, ever since Les Coleman's been around here and the men up there in Lukesboro, Jack Kuzar and Bill Zavari, they laugh about everything every day; they threaten me and other operators, saying they're going to put us in jail. We work hard. We're the backbone of the business. And they threaten to put the regular mine inspectors in jail if they don't shut us down and do all this here and there, so far and so on. And I think that's very unfair.

And it makes things a little short there. MSHA stands for mine safety health administration. Now the way I feel at this moment here, and for the last couple of years, that MSHA – safety and health should be taken out while those people are still in charge, or we're out of business and they will have somebody killed in our region. There's no doubt about that.

And I have a couple other things here I want to pop in here [indiscernible]. Oh, I did forget about – he did rip my grout wire on my 60 horsepower pump, which is under water right now. He did that also, which I was [indiscernible] up by my regular inspector that told me this. He come back in the next day and write me up for a number of very high citations and I have more citations the last three years than I had all my life, point blank period. I'm [indiscernible] 40-some years and trained a lot of good men on my time already. So, I think I'll let it go at that point there, but these people have made a fool of us people, and here's another thing that pisses me off. What he did – every man, my father and my grandfather and I have a 30-some year old son that I

trained to coal mine, but I don't have him in the mine. He made a fool of every man and his dad, and that's not fair to us. And they're fighting words, and I think I'm going to let it rest at that point there.

MR. SORUM: Well, can we have a comment form from you –

MR. LUCAS: You better believe it.

MR. SORUM: -- as well as –

MR. LUCAS: Yeah, I don't –

MR. SORUM: -- and the citations?

MR. LUCAS: I watched the other people in front of us here first and I wish I would have had stuff together, I would have grabbed [indiscernible].

MR. SORUM: Well, you can –

MR. LUCAS: But, you will get a copy and then some.

MR. SORUM: You've got time.

MR. LUCAS: You better believe it.

MR. SORUM: You know, as soon as you get it to us, we'll move on it.

MR. LUCAS: I thank you.

MR. SORUM: Okay?

MR. LUCAS: You betcha.

MR. SORUM: Thank you very much.

MR. LUCAS: Okay.

MR. SORUM: Randy Rothermill [phonetic]? Did I get that right?

RANDY ROTHERMILL: Yeah. Good enough. I'm not going to try yours. I'm not going to talk and...

Okay. You did get comments from us quite a few times since February, and we did turn in some in today – all of us did; they don't know it, but they're turned it.

Our problem is with District 1, the management team, because RS&W, we've been operating a mine, deep mine, near Pott's [phonetic] Hill since 1984. We average two, three citations a year. Since this team took their – since last December, we've had the mine shut down eight times – imminent danger order zone – and they've never gone inside. And, in my 35 years, I haven't ever heard of an anthracite miner, an underground anthracite miner, getting killed on the surface. You don't even hear of anybody getting hurt on the surface. Our inspectors that come out, they spend three, four days on the surface

inspecting our mine. They had till dinner time to inspect the inside; one day, till dinner time. Health and safety, that is out; that is out. There is no health and safety no more. It's all violations. How many can I write now? And they're not in 30-CFR; they're made up.

Anthracite coal and bituminous coal is altogether different; but it's not different at all, it's just the pitch. Bituminous, it's like walking around your own floor; anthracite miners, we're crawling up and down that wall. That's how we work. The management team that's there now, they look down our holes and they say, "We're not going down there." Well, there's a reason for it – they're scared. And if you're scared to do the job, you can't do it. So, I guess that's all I would say.

MR. SORUM: Thank you very much. We do have your comments as I recall, and I think we've forwarded that over to Labor already.

MR. ROTHERMILL: That's one more thing. I don't see anybody from Labor here, from MSHA. [Inaudible]

MR. SORUM: Thomas will – he's the boss.

MR. ROTHERMILL: -- from MSHA.

MR. HICKS: I'm not their boss, but –

MR. SORUM: He's the man who makes it happen. Remember what I said about the assistant secretary calling?

MR. ROTHERMILL: The assistant secretary did tell me he was going to come and visit my mine, watch me. He never showed me. So, there's no sense, you know, [background noise].

MR. HICKS: Well, let me just comment on the way we – when we find out that small business owners are going to testify, and [indiscernible], someone in my office contacts the representative and let's them know that we need someone to have someone local at the hearing to address the comments and issues. We did not know that some people from MSHA – you would be testifying today. MSHA has been very responsive. As a matter of fact, Peter mentioned one of the things about former assistant secretary and the things they have done, and they report to Congress. They are one of our agencies that have an overall rating of "A." But, it's apparent from us that there are some issues that need to be resolved on a particular matter, and in the last 45 days we've received five or six comments out of, you know, the District 1 region regarding MSHA issues. So, you know, I'm not putting the problems with the management as a result of those comments, I'm just saying that we have five or six comments filed, and that, you know, coming out of that region. So, there are issues and concerns for my director, but there is no doubt that had we known that we had this many people that would be testifying regarding MSHA, someone from the Washington office would have been present to hear

your concerns.

[Inaudible voice]

MR. SORUM: Okay, Mike?

MIKE: Okay. I don't know if I should address to you or to the fellow over here, but –

MR. SORUM: We're both listening.

MIKE: You're both listening. All right. Generally, the problem that we have is with MSHA and with the law that MSHA is regulating, and the best way for me to explain it is just to talk about some of the people that were speaking today.

FSIS, you know, and HR, you know, 12, or whatever the heck they were talking about, that all sounded Greek to me. What we're talking about probably sounds Greek to you guys, too. The type of mining that we do – now this is where the problem really arises – the type of mining that we do is Greek to MSHA; it's Greek to the MSHA inspectors; and it's Greek to the people who are in Washington. They've never seen this type of mining before; the regulations weren't written to address it.

Back in 1889, the state of Pennsylvania drafted the first mining regulations in the country. They were the Pennsylvania State Anthracite Regulations. And every regulation that was passed has someone's blood on it; someone died, then they wrote a regulation to make sure that if that regulation is followed, that accident would never happen again. It's a nasty way to promulgate rules and regulations, but for 130 years that's the way it's been done. A year later they promulgated the Pennsylvania Bituminous Coal Mine Regulations. Two different laws, they went in two different directions, because the conditions under which we work are vastly dissimilar. Like my brother said, you know, we work on the side of a wall; bituminous miners work on the floor. All the other different equipment, different technology, different ventilation, different roof control – everything that's addressed in law is different from most of them.

In 1969, the federal government took Pennsylvania's Bituminous Coal Mine Law and imposed it over all the coal mines in the country. From that point on, we've been the square peg that's been forced in a round hole, and what it's done is driven the mine count from 300 down to 15.

I'm a miner; my father was a miner; my grandfather was a miner. And most of my relatives either are or would be miners if there'd be mines out there yet. We live in a relatively economically depressed area. Coal mining was always a real good economic profit; relatively safe job. The problem we have now is as MSHA is forcing a law on us that doesn't fit our conditions; they're actually making the mines more

hazardous. A lot of people are leaving the mining community because they don't want to work in mines that are regulated by a law like that. And I can give one example. There's a fellow sitting right there, Stu Hemmelberger [phonetic], his deep mine.

There are two basic mine gasses that we have to contend with. One's methane and the other's what we call "black damp," carbon dioxide. They work in two dissimilar ways. Methane is lighter than air; it travels up. Carbon dioxide is heavier than air; it goes close to the floor. In an anthracite mine, we're working our coal seams like on a wall there. The methane rises – it goes right out to the surface all on its own. Methane isn't a problem. Carbon dioxide comes down; it'll follow down the wall and come down to where we're working. That's a problem we have to be concerned with. MSHA's rules and regs concern themselves mostly with methane. They're entire ventilations systems – and this alludes to the plans. If we want to have a ventilation plan, we've got to submit it to MSHA, the district manager, for approval. The assumption is – and I don't want to be too critical of Jack because he's in a bad position, he's supposed to know what he's talking about. The poor bugger doesn't. He's never worked these mines; he doesn't have a clue as far as how a ventilation system should work. He doesn't have the expertise to either approve or deny the ventilation plans. So, he flatly denies every one. We have mines working for three years without a ventilation plan. The mentality that they have is that they're concerned with methane to the extent that they're causing problems with carbon dioxide. These coal seams are on a pitch. Carbon dioxide is heavier than air. It'll flow like water; you can think of it the same way as water. He's having some of these companies seal their mines, seal portions of their mines. Now, what happens when you seal a portion of a mine, in a bituminous mine, you seal it, that's the end of it. These coal seams are on pitch. It's like you're trying to seal an elevator shaft. Eventually, that seal will fail. When it fails, if you have water over the top of that seal, or carbon dioxide, that carbon dioxide will come down and flood the mine, and everyone underground will die. These are the things they are forcing these mine operators to do.

We just submitted a slope and shaft sinking plan. Now this is – everything that we do we have to submit plans or get approval for, and like to just show what District 1, their policy is and how fair it's gone, we hired an engineer. He took 30-CFR, word for word out of 30-CFR; he complied with every provision in it for the slope and shaft sinking plan. Submitted the plan to District 1; they have 45 days either to approve or reject the plan. They took 45 days, sent it back, it was rejected. They also send along a memo, memorandum, for district managers, and you may be familiar with this, that pertains to slope and shaft sinking plans. The date on that was July 2nd of 2004. This is when District 1 received this memorandum from the Arlington field

office, and in it was new criteria for slope and shaft sinking plans. The last statement in this memorandum was, "Please distribute to all interested parties." Mine operators, contractors, and such not – it makes perfect sense. If they have a new way they want you to submit a plan, put it on paper and give this to the people that are submitting the plans. Jack sat on that for just about a year. He knew that we were going to submit a plan because I had him come down to our operation, tour what we wanted to do – now, we're not trying to flagrantly break laws. We're trying to comply with the laws, and we'll go to the point that we'll take a lot of our time to come down here and talk to these people, and do whatever we can to get them to come to our operations; find out what they want and try to give it to them. But they're withholding little pieces of information, and they won't allow us to comply with the rules and regulations. And this is more or less an ongoing type of thing. You know, we're not educated people. You know, I don't have a college education; neither of these guys do either. But, we work our tails off every God darned day, and now you have somebody that sitting there with a boot in your neck. You know, you get to the point that – you know, you hear the term "going Postal." It's getting to the point that it's much more believable for me to understand how that happens. You know? But, I guess that's where I'll let it go.

MR. SORUM: Do we have a comment from you?

MIKE: Yes.

MR. SORUM: On file?

MIKE: Yes.

MR. SORUM: Thank you. I should say at this point, just so you all know, we are recording this hearing and there will be a transcript prepared and put on our website for all people to review once the hearing's over. So, there is a permanent record that is posted for public consumption nationwide and worldwide. Darryl?

DARRYL: I kind of agree with Mike and Earl about the square peg in the round whole, and I'd like to say that we have an organization that is sure that we obey the deep mine safety laws, called Deep Mine Safety. And it's a law that fits, and the MSHA law, most of us can't comply with it. It's almost impossible, and they keep – they keep revising it and it gets harder and harder for us to comply to it.

But, I was – I'm a partner in S&M Coal Company, and I feel I have been wrongly abused by MSHA. In 2001 I purchased S&M Coal Company. It was an abandoned mine in [indiscernible] and I bought it because of the permitting in process. It was already in place, and all I needed to do was put in a new slope down. So, it was work intensive, and I tried to salvage the mine, but was unable due to its vast workings. I then started to develop a new slope, approximately 1000 feet west of S&M. It was called Short Mountain. And before starting this slope an

old airway was located on the surface for a vent system and an escape way. Of course, every mine has to have an alternate way out. And then we began to develop the slope to 100 feet. And deep mine inspector Terry Wolfgang and I talked about making a crosscut to make that escape way in that vent system. So I agreed to do so, of course. After doing so, MSHA inspector Mike Doodash [phonetic] informed me that it was wrong making an escape way and airway because it was illegal. I asked him why and he said it was illegal to use abandoned workings. So he then made me seal this mine; he made me seal the crosscut. But then, let me continue to mine down 350 feet without an escape way. If that porter would have been shut, there would have been no way for me to get out.

So, I was eventually shut down – we call it red-tagged. They stick a red sticker on your slope and you're done. You can't work no more. So, I talked the supervisor in Cressona [phonetic], his name was Ted Hair [phonetic], and he informed me it would be the best of my interests to reenergize the old S&M mine. So I did that; it was a costly effect; I spent lots of money and time redeveloping it and re-timbering it, and he wanted me to drive the gangway and an airway over to the new mine that I had just got red tagged, which I didn't understand that process of thought. But, anyhow, I did develop the gangway and airway, and I got an inspection by Jack McCann [phonetic]. He informed me that I needed a new airway for this mine. So, to stay in compliance, I began to drive two shoots, which was costly, and it was not at all profitable. So, I developed the two shoots and airway – I finally got the new airway out, by the way, and it is shut down.

So, I got an inspection by Tom Garcia and Dennis Herring at this S&M mine. Tom Garcia told me that I would be better off working at a loading dock called Big Lots in the area and that I had no future in anthracite, which I've done for 32 years, and my father has done, and his father before him had done. He then entered the mine illegally, Tom Garcia. I was doing a pre-shift with his partner, Dennis Herring and I didn't give anyone the okay to enter that mine. And when I got down there he was there, and he has no authority to do that. He then told me that anthracite miners are nothing but a liability and that we mine and get black lung or drowned by water or killed by roof and rib falls. Fortunately, I'm still alive here. I argued the point but to no resolve. I'm about \$75,000.00 in yet. Three years later I have no new slope and I've been to meetings with John Kuzar, Bill Zavari, and Tom Garcia and got no results. That's all. Thank you.

MR. SORUM: Do we have a comment from you on file?

DARRYL: I'll get a comment ready.

MR. SORUM: Okay, great. Thank you. Who's next? Greg Showers?

[Inaudible voice]

MR. SORUM: Oh, I'm sorry – David?

DAVID: I'm here with Earl Keefer and I have two deep mines and I just want to, you know, there's a bunch of us making comments and I just want to – there's just two brief things that I want to touch on – MSHA does abuse the system and Earl has a lot of testimony, but I'll just give you a brief thing.

I have at least 25 years of mining experience. My father was never in it, but I was taught it, and I wasn't taught it by MSHA. But, the one mine that I had I had purchased off another guy. This was two years ago. They were using this one piece of equipment; you might as well call it a little train. That's what we used to transport the coal in and out. Easy explanation. This was at this mine for 14 years. MSHA come out, just – with 33 supervisors that took the reigns, more or less. They're not like Mike stated earlier, they have no anthracite mining experience. They came and closed my mine down. I had nine people working at that mine. We lost all production that day because of that piece of equipment. I had to make numerous phone calls to Arlington, talk to one of their supervisors – I went over these other supervisors' head, right? The next day I could use that piece of equipment. What about my losses for that day? My wages?

And I'll give you another one, then. On December 1st I had an accident, a small accident, I had a miner – three, four guys hurt. I called MSHA in and they come in and investigated, and a DEP, which is the state. That day they come out and investigated it. The next day they come out and investigated it. They closed the mine down. Three days later the order was lifted to go back to work. MSHA lifted the order. Then – that was on a Friday – the following week, on a Monday, MSHA came out and closed the mine down again on a rumor. This investigation went on for three weeks. This mine was closed for three weeks. Now, I heard you say about abuse of the system, this is abuse of the system.

At this time I found out through another mine inspector that works for the federal government that his supervisor told him, and his name was William Zavari, the supervisor, told the other inspectors that until someone stops lying – now they talked to all the people working at this mine and they took their assumptions and accused them more or less of being liars on this investigation. And they told them that this mine will stay closed until somebody stops lying. I mean, I don't know, I'm not an attorney but I think this should have been – which I still am filing to take this to court. The mine is open again, but there was no evidence, nothing in anything in their support, that showed that this mine should have been closed down for these reasons. Nothing – I have not yet received nothing on this.

And you keep hearing that, you know, people in America should be held accountable for their actions – you, me, and everybody else. If you drive down the road, and you're speeding – and I think these three guys should be held accountable for their actions. This cost – you know, there's a lot of people here, like, gave testimony earlier. They don't know – you know, I didn't know what they were talking about and some of the stuff, the one girl that talked back there about inspectors and being abused in the food industry –

[END TAPE 2 SIDE A]

[START TAPE 3 SIDE A]

MR. SORUM: -- few minutes to prepare, sir.

GREG: Thank you, I need all the time I can get. Good morning. I have two items I would like to make you aware of in an effort to demonstrate the attitude of the current regime. At the district manager level, Coal Mine Health and Safety District 1, in Wilkes-Barre, unfortunately my predecessors couldn't provide you with specifics, but I have.

In item one, the beginning there is an investigation of an incident that occurred at my mine. That was prepared by me and investigated by myself and the two other individuals who are also a mine foreman and an assistant mine foreman at the mine.

The facts and circumstances are that on 22 December 2004 at approximately at 1330 hours, while men were being transported to the surface at the end of the shift, mine car encountered a piece of fallen rock approximately one foot square and three inches high, and ice, which derailed the front end of the mine car. The mine car shifted to the left and came in contact with a piece of timber which stopped the mine car, stalled the hoist, and subsequently caused the hoist rope to tear, at which time the mine car traveled down the slope with the front end derailed approximately 80 to 100 feet, at which point the rear end also derailed and the mine car came to rest at a stop against the left rib. Miners traveling in the mine car were myself – I debarked the mine car through the front end upon the cable tearing; two other individuals – both of whom debarked the mine car after it stopped. The cable was reattached to the mine car and the mine car was pulled to the surface after the three occupants crawled to the surface under their own power. It was only temporarily attached using what is called a "cable puller."

After changing clothes, Fisher and Merwine [phonetic] departed the mine and I remained to reattach the hoist rope in a permanent fashion. Merwine then decided to seek a medical examination at Pottsville [phonetic] Hospital, where he was x-rayed and found to have a chipped bone spur, a calcium deposit on his left elbow got chipped. An Ace bandage was applied and he was released from the hospital.

Fisher later decided to seek medical examination at Pottsville Hospital where he was x-rayed and found to have a cracked rib from a previous injury that was healed and bruised ribs from his current injury. He was given pain pills and released. No medical examination was required for myself as I only received a bruise. As this was the last scheduled work day for prior to Christmas vacation and the New Year, this investigation was prepared and documented 23 December and the matter considered finished business.

On 28 December I was contacted by Terry Wolfgang, the state mine inspector assigned to my mine, regarding the incident he heard about. I don't have to elaborate where he may have heard about it. At which time he requested to meet with myself and Merwine at the mine at 0800 hours the following day, 29 December, to investigate the incident. At 815 hours on 29 December Wolfgang and Kenneth Dangler [phonetic], the state electrical inspector for the mine, arrived at the mine, at which time Wolfgang handed me a compliance order, which was dated that day, with a time of 0730 hours, as a stop order to investigate the incident.

Compliance order was then issued detailing his investigation of the incident and a closure notice, all of which were prepared prior to his arrival and prior to his entry and examination of the mine. After entering the mine and examining the conditions, it was determined that we would give the slope another day to continue thawing, as we were experiencing mild weather conditions which contributed to the fallen rock in the first place, and we would begin to clean up the slope and scale down any loose rocks and ice the following day.

Upon his arrival at the mine the following day, I was informed by Wolfgang that he was contacted by Greg Maholchek [phonetic], a federal inspector from the Wilkes-Barre office the previous evening regarding the incident. We then entered the mine and began clean-up activities. At approximately 0900 hours Greg Maholchek arrived at the mine and informed me he was issuing a 103K order to initiate an investigation of the incident. When asked how he was made aware of the incident, he indicated to us the district office was notified by the head of the Deep Mine Safety state office, Joseph Spaponi [phonetic]. When asked by the state inspectors and myself if he was going to examine the slope and modify the order to allow us to continue our repair activities, his response was, "It is wet down there?" To which we replied, "Somewhat." And "Do I have to crawl?" To which we replied, "Yes." He informed us that he would not go inside today, and that other inspectors would come to the mine on Monday, 3 January 05. Upon expressing our dissatisfaction with his response and his continued refusal to begin the examination, he related to us that he was only following orders and the investigation would not begin until Monday.

He, Maholchek, then informed me he was issuing a citation for

failure to report an accident. Upon my explanation that the hoist was not out of service for more than 30 minutes, there was no medical treatment, only diagnostic procedures and first aid, which are not reportable, and no lost work days, he explained there was nothing he could do and I could conference it if I disagreed. Maholchek then left the mine and we had to cease repairs.

On 3 January, two state inspectors and four federal inspectors – Greg Maholchek, Danny Silvers, Dennis Herring, and George McIntyre arrived at the mine to begin the investigation. After an examination of the affected area of the Holly slope, Maholchek modified the order to permit repairs on the slope to continue and indicated he would return Wednesday, 5 January, to evaluate the area and remove the order.

On 4 January, assisted by Wolfgang and Dangler, repairs to the slope were completed. On 5 January inspectors Herring and McIntyre returned to the mine, at which time McIntyre issued a citation for altering an accident site. In that, we reattached the hoist rope to the mine car and pulled it to the surface immediately after the incident. Upon explaining that we did so to preclude the equipment from being non-operational and to prevent the possible loss of use and damage to the mine car due to the thawing conditions in the slope, his response was that he was following orders and I could conference the citation.

After waiting several hours I made a phone call to district office to determine the whereabouts of Maholchek. I spoke with Maholchek and he informed me he would not be coming to the mine that day and he would be at the mine the following day, 6 January, with personnel from technical support division to conduct non-destructive testing of the hoist rope, after which Herring, McIntyre, and the two state inspectors departed.

MR. SORUM: Excuse me, Greg, but this is a very good presentation, it's very complete. Do you have a comment form filed with us?

GREG: Yes, I do.

MR. SORUM: If you would just make sure that we have a comment form on this, we've got to move on, and I'm sorry, but, you know, time is limited, so--

GREG: I didn't get to item two yet, but this is – if I may, since my previous people didn't take as much time, if I could only have a few minutes.

It should be noted that during this needless and warrantless investigation, enforcement actions – and I emphasize enforcement – were being directed and mandated from the district level. This is substantiated by the fact that an inspector from this district office was dispatched to initiate an investigation at a mine and the possible sub district field office jurisdiction without the Pottsville office even being

notified or assessments in order to request a hearing in front of administrative law being made aware of the incident. Also, this matter has yet to be litigated, as I am awaiting assessments in order to request it. I initially conferenced some of the citations, and the conference specialist, Ken Hair, to no avail, as he indicated to me his hands were tied and he could not change anything. Compliance assistance at MSHA District Level 1 is through overzealous enforcement actions and inspections.

Item number two I really would like to have you hear. In October 2004 I attended an MSHA Job Fair in Redding, PA, for employment in the career interim program as a coal mining health and safety inspector. The job fair consisted of a math test, a writing test, and a structured interview. It was a joint job fair for both coal and metal / non-metal, positions. I was subsequently notified that I was not referred for selection as I did not interview well. I was later informed by individuals present at a meeting between the district manager and inspectors that the district manager stated that he would not hire anyone from the job fair because he did not have the opportunity to interview the applicants for the coal mine inspector positions.

On 5 February I attended another job fair that was held in Wilkes-Barre for coal mine inspectors only. Being that I attended the previous job fair and passed the math and written portions, I needed only to appear for the interview portion. Considering that I may not have done well in the previous interview, I carefully selected past experiences that closely related to items in the competency model for mine safety inspectors and specialists. I prepared my responses based on the intermediate and senior levels depicted in the competency model; I rehearsed my responses and committed them to memory. I was quite dismayed when I was later notified I was not among the list of candidates referred to the selecting official. I later learned why this happened. When I was made aware by MSHA insiders that the individual selected was affiliated with the United Mine Workers of America just as five other recent hires where.

It was also related to me that the individual selected had no underground experience, few certifications, and most importantly, did not have veteran's preference, as I did. At this point I came to the realization I had been discriminated against, and that preselection, preselection, had occurred.

On Wednesday of this week I was made aware by MSHA insiders that the district manager once again and his entourage traveled to Indiana, PA, bituminous region, this past weekend for another job fair. On Monday of this week, while addressing a meeting with inspectors, the district manager informed the group of the job fair and that he would be hiring two underground inspectors, and stated since he can't get any quality people from this area, he will hire from wherever he can

get them. Based on my life experiences, including 24 years in the military, 15 years as a federal employee, and my mining experience, my qualifications and certifications, I consider this a personal insult. A copy of my resume is attached.

In view of the foregoing items, it is my humble opinion that the district manager has an attitude of total disdain for the anthracite independent operator community and a disrespect for the equal employment opportunities regulations and a disregard for the rights of veteran's afforded them for preference in hiring for federal positions. I suggest an examination of the hiring practices being used at MSHA as they provide the opportunity to eliminate individual qualifications and veteran's preference for the subjectivity of a structured interview. Thank you.

MR. SORUM: Thank you, Greg. Cindy Rothermill? Here she comes. She's ready.

CINDY ROTHERMILL: I didn't have breakfast either. [Inaudible] Okay. I'm going to be very brief. First of all, let me say this has to be a serious problem. If you don't understand what I'm talking about, you'd have to imagine what it would take to induce that group of motley miners to board a bus, leave the hills of Skocul County, and come take a ride across the Ben Franklin just to have to pay \$4.50 to get back. We got loss on the way down, by the way.

Okay, my father was killed in an anthracite mine on March 22, 1974. In February of 1982, my brother, who is a year and a half younger than I, was severely burned in a methane ignition. He spent 13 years at the Lehigh [phonetic] Valley Burn Unit. On September 11, 2000, my son and I leased a small drift mine in Skocul County, Pennsylvania, with the help of my husband who works for RS&W, owns RS&W. We hoped to develop the Buck Drift into a productive mine for our son to operate. There were substantial reserves on this lease. Conservative estimate would be about 50 years of mining for a small mine operation.

From September 11th, the day we opened the mine, until November 6th, which is less than two months later, there were 21 times there were inspectors at this mine. I thought maybe, you know, they liked my coffee, either that or they liked to see a woman work, but this pattern continued for the next several years. It got to the point where my husband no longer tolerated. Once he asked them to leave the mine. They put a temporary injunction against my son and I because my husband, they said, denied entry. The second time he ordered an inspector to leave the mine, they put a permanent injunction against my son and I, that we're never allowed to ask a mine inspector to leave the mine again. The reason that he ordered the mine inspector to leave the mine was I was on the surface of the mine when the inspector arrived and he asked me if he could go inside the mine and I said no, because I

knew what was going on inside the mine. I said I don't feel comfortable with you walking in right now. My son and my husband were driving a rock tunnel and they would be working in the main gangway. The inspector could have possibly walked in the mine on a detonation when they were firing the rock gangway. He ignored my warnings and walked in the mine. They were in the process of drilling up the rock cut, putting the dynamite in. If it would have been minutes later, the inspector would have been blown up by walking in there.

Now, on ALJ, we took that court and an ALJ ruled that an inspector has the right to enter a mine anytime he wants, despite the danger. This is why we're grateful to have the opportunity to come here and address this. We closed the D&F mine in March of 2003 because of the problem that the anthracite operators are having with District 1. We couldn't get a ventilation plan. In order to comply with what Jack Kuzar wanted for a ventilation plan for that mine, it would have cost us \$50 to \$100,000.00 – three people at this mine. I have affidavits from three other operators that closed in March of 2003 for basically the same reasons. Thank you so much for your time and for hearing our testimony.

MR. SORUM: Thank you very much. I really thank all of you from the mining industry who have come today. Just so you know, there is strength in numbers. We had a case last year where we had an issue with the Food and Drug Administration. We had over a hundred comments filed and we were able to turn the policy around, and we'll see what we can do with our friends at MSHA trying to help you. So, I thank you very much for making the effort.

[Inaudible voice]

MALE VOICE: Jim is going to read somebody's testimony.

MR. SORUM: All right.

JIM MCDEVITT [phonetic]: Good morning. My name is Jim McDevitt and I'm with the U.S. Small Business Administration, and I've been asked to read this testimony from Michael DeRenzo [phonetic], vice-president of DeRenzo Coal Company:

In the recent SBA news release dated May 18, 2005, Peter Sorum states we want to encourage federal regulators to assist business owners with compliance rather than go straight to the penalty stage. That statement represents the crux of our difficulties with the Mine Safety and Health Administration. We are a small family-owned anthracite coal company in continuous operation since 1930. Since then, and long before many regulations, health and safety has been an integral and logical part of our operations. As much as we support the need for rules and regulations to further insure health and safety, enforcement of the same has gone wrong and become unfair, inconsistent, and dysfunctional. If left to continue in its approach to improve health and

safety, the only mines MSHA will consider safe work places are those that do not operate. MSHA needs to assist mine and plant operators address any inadequacies, not penalize, or worse, close operations. Many anthracite operators are questioning the integrity and intentions of MSHA enforcement, and rightfully so. On several occasions over the past five years, our small operation has been subject to burdensome, unreasonable, and dysfunctional inspections. In each case, the presiding inspector was unwilling to discuss logical alternatives and reasonable time frames to address cited problems. It is as if MSHA believes small businesses have a complete staff waiting on call to immediately address anything that comes up, like some kind of in-house MSHA fire department. What's worse is that cited problems are generated from conditions that have passed many previous inspections. All of a sudden, and quite arbitrarily, equipment that has operated safely for years without any threat to health or safety was deemed dangerous. The following excerpt is from proceedings of our legal challenge to MSHA's unreasonable enforcement behavior:

"The belt conveyor subject to this citation and interrogatory has been in continuous, unmodified operation since 1992, 13 years, and further has been subject to by-yearly AAA MSHA inspections over the same time period. Modifications were commenced to address the subject citation. Nearly 90 percent of the required work was complete when a 104b closure order was issued, rendering our entire plant out of operation. The degree of negligence cited in said closure order was completely unwarranted. No person's health or safety was, or has ever been, adversely affected by the operation of the subject conveyor. Modifications to address this citation proceeded as quickly as possible. Again, a closure order was completely inappropriate and dysfunctional. The entire situation was handled in such an unreasonable manner, that the respondent considered it harassment by the presiding inspector. Accordingly, a monetary penalty would be equally inappropriate and dysfunctional."

The above is not an isolated incident. We have witnessed a very problematic trend in the manner MSHA interprets and enforces regulations. Although small businesses may be the backbone of the American economy, paralysis is setting in as a result of regulatory disease. We beseech the SBA for help to get MSHA back on track of assisting companies improve the health and safety of the work place.

Respectfully, Michael DeRenzo.

MR. SORUM: Thank you very much. Now, we've got two people scheduled to call in.

MALE VOICE: Tammy, are you there?

TAMMY: Yes, I am.

MALE VOICE: Go ahead.

MR. SORUM: Tammy, go ahead.

TAMARA SUE MOCHRA [phonetic]: [Speaker phone with background noise] [Indiscernible] senior advisor at the national office [indiscernible] members of the SC-3 regulatory status board and advancement [indiscernible] federal regulatory agencies.

My name is Tamara Sue Mochra and I am an advocate for the local small timber company in Ruskie [phonetic] County, West Virginia. I wish to state that I am not a lawyer; I am volunteering my efforts only because this keeps local small businesses, to make it possible for them to continue with their endeavors far into the future. Please allow me to express my gratitude for the services that your agency provides. It is a great sign of the greatness of our country that we can level the playing field for small businesses to compete through the systems of [indiscernible] development, which agencies such as yourself provide. I've been able to speak with only one of the local companies this week directly in regards to his comments and complaints about regulatory enforcement and compliance. This company is Thomas [indiscernible] Logging and the owner is Mr. Don Rinehart [phonetic] of Carroll [phonetic], West Virginia. I have information to testify on his behalf, and he has provided his records in foresting with specific dates and citations. I will forward them to the national office as requested at a later date. I have listened to complaints from other local timberers. They are not aware of this hearing; therefore I do not feel comfortable in relaying their concerns at this time.

The particular incident [indiscernible] that has resulted in fines were extreme examples of how small timber companies are affected by regulations and agencies, such as OSHA and West Virginia Department of Natural Resources.

Mr. Rinehart has been in the timbering business in some [indiscernible] or another for 25 or more years. He is well-known in this area, and unlike some of the larger timbering companies which operate in this area, he has [indiscernible] which are willing to timber small tracts of land. His equipment consists of one bull dozer, two skidders, one [indiscernible], and one loader and two semi trucks. He has assembled a four-person bucket crew at any time and has little time to spare for any time-outs in his operation.

Mr. Rinehart's crew includes himself, his youngest son, his nephew, a skinner operator, and a truck driver. These individuals have worked together for many years and have formed a close working relationship. Mr. Rinehart expressed to me on many occasions the frustration and fear that he experiences when dealing with OSHA and West Virginia Department of Natural Resources. He tells me that he has had many [indiscernible] when they have appeared unannounced at random times on the work [indiscernible]. These interruptions present

a grave danger to the workers, to his crew, and himself. They are known to trespass on individual's properties, which are posted as no trespassing without [indiscernible], without permission, and endangering themselves and infuriate the land owners.

Quality [indiscernible] land owners are fearful that persons such as [indiscernible] inspectors, who are unfamiliar with the location and of all of the crew members, and to sneak up on them in the woods might inadvertently be injured on their property. This is an issue of liability in their view and completely unwelcome by both land owners and cover cutters and loggers in this area.

Ironically, one of the citations that [indiscernible] Logging received was that of not having a skinner operator two lengths away from a tree. Inspectors do not hold themselves to these standards but loggers are penalized for it. Mr. Rinehart had to pay a fine for this offense in the past few years. He has requested that the distance be measured, but the inspector refused to acknowledge his request.

Another fine included poor housekeeping by Mr. Rinehart for having sawdust on the running boards of his log loader. Mr. Rinehart contends that his fine was the only one in all of the timber and logging companies, some of which are huge pulp and paper companies, for such an offense in that year.

The final complaint is in regards to trees which touch other trees when they are being felled, otherwise referred to as lack of consideration for other trees. This is the most ridiculous in my opinion. [Indiscernible] Woods, which is a tract of some 18 acres, has trees which are less than ten feet apart from one another and 30 to 40 feet high. Their roots extend across one another and their branches touch while standing. If Mr. Rinehart were to put his [indiscernible] on the bark of one of these trees, he would be in violation of this law and subject to several thousands of dollars in penalties.

These same trees are in danger of killing one another because they are too close to grow properly and will choke one another to death over time. They will not allow sunshine to get to them and their exposure to rain is limited. In a way, these timber companies help to manage our natural resources when they select cut; that is beneficial to the trees, not harmful.

Also, this [indiscernible] benefits individuals that need only certain trees [indiscernible] for a small profit. Perhaps these trees are too close to a house or other structure. You will not find a large timber company that will deal with it and reclaim the ground in the manner at which it needs to be executed. Their equipment is far too large and the screws are [indiscernible] costly. The tree trimmers will not [indiscernible] from the sale of the trees either. With income limitations that we have in this area, these seemingly small amounts of

money are vital to our local people.

The income that is generated by these small companies is also crucial for our area. There are few jobs left local people can find which pay any decent wages. The individuals that are willing to work these hazardous jobs historically do so because the risks of poverty far outweigh the dangers of work that they are familiar with from an early age. Timber cutting is an art, of course, like wire whisking and other jobs which involve being intimate with their surroundings. A good timber cutter can automatically assess the variables and make instantaneous adjustments. This requires teamwork and concentration, and surprises like spot inspections can be deadly when it breaks the attention of these individuals that are most at risk of being injured. The inspector just [indiscernible] up in the middle of a cut has suddenly changed the direction to which the tree must land. The man behind the chainsaw has a feel for how the cut is. If he hits some unforeseen place in the inner structure of the tree at the wrong time, it could be a genuinely fatal mistake. Large logging companies have the resources to have a scout stand watch and flag intruders to the side. Small timber companies do not. In addition, large corporations have attorneys on staff to represent them. The only remedies that small companies have is to pay the fines and accelerate your operations to make up for the losses. When these losses exceed the profits for any given job, it is devastating to small business owners in this field.

Another concern is the fairness of the remedies to be fined. If you live in our area, you will find the punishment far exceeds the crime for certain individuals such as Mr. Rinehart. Mr. Rinehart feels as though it has gotten to be far too personal in nature and that because he has tried to defend himself against these personal assaults to his business, he is a target for retaliatory fines.

In closing, I apologize for not being able to [indiscernible] or [indiscernible] and complain. Many of these small timberers are in the woods from daylight to dark, and I would need more time to safely locate them and provide additional testimony.

I thank you very much for your kind attention to these concerns, and if I can in any way help your agency in the investigation of these matters, I would be pleased to do so.

MR. SORUM: Thank you very much, Tammy. Please forward those comments as soon as you have them put together and we will see what we can do.

MS. MOCHRA: Okay. Thank you very much, sir.

MR. SORUM: Thank you for calling in.

MS. MOCHRA: You're welcome. Have a good day.

MR. SORUM: Do we have George?

MALE VOICE: Mr. Coleman?

GEORGE COLEMAN: Yes.

MALE VOICE: Okay. Go ahead please.

MR. COLEMAN: Good morning, Mr. Sorum, ladies and gentlemen. My name is George Coleman. I operate sole proprietorship and I am registered in the Vietnam Veteran Home small business. We are also health zone certified.

Recently we registered a new head lice treatment with the FDA. Development took close to eight years from conception to the point where we can now go to market as an over-the-counter product. After all our time, money, and effort, we now find that we're forced to compete with large numbers of head lice products being sold on the Internet and making drug claims, seemingly with no regulation. The FDA is mandated to regulate products that make drug claims and although they've been aware of these products for years, they have done little or nothing to bring them into compliance. I ask that the FDA be requested to take a look at these products and the claims they are making. It shouldn't be very difficult to do. All the evidence is on the various websites.

In closing, I would like to add that the proliferation of fly-by-night products cause harm not only to businesses like mine, but to any number of businesses large and small who play by the rules.

Thank you for allowing me the opportunity to address you. If you have any questions I'd be pleased to answer them.

MR. SORUM: Thank you, Mr. Coleman. We have your comment on file and we're working with the FDA on it at this time. So, thanks for calling in.

MR. COLEMAN: Thank you. Good bye.

MR. SORUM: The last two testimonies demonstrate that we do whatever we can to reach out to people. By using Ready-talk we give people like the lady in West Virginia the opportunity to call in and testify here in Philadelphia, because as I'll be in Fargo next week and I've got people calling in from Montana and Wyoming and, you know, all across that region, too. So, we want to make our office and our capabilities accessible to anybody. There shouldn't have to be a time and money constraint in terms of travel. That's why we come out to the field in the first place, so that we can come to you rather than have you come to Washington. So, with that, Mr. Tuller?

MALE VOICE: Yes, are there any other questions?

MR. TULLER: Are there any other questions before we close? Thank you for coming. I hope it was worth your while and I hope we can make a difference here, Peter. Thank you. Mr. Turner?

MR. TURNER: I was wondering if this [indiscernible] personnel [indiscernible] in the facility?

MR. SORUM: Is there what?

MALE VOICE: An FSIS personnel...

FEMALE VOICE: Representative.

MALE VOICE: I'm FSIS, but not at that level.

MALE VOICE: Not at that level?

MALE VOICE: No. I'm an enforcement officer.

MR. SORUM: I spoke to you on the phone, didn't I, last week?

MALE VOICE: Yes.

MR. SORUM: Thank you for your time.

MALE VOICE: Thank you very much.

[END TRANSCRIPT]